

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA
Title III

No. 17 BK 3283-LTS
(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO HIGHWAYS AND TRANSPORTATION
AUTHORITY,

Debtor.

PROMESA
Title III

No. 17 BK 3567-LTS

**LIMITED OBJECTION OF AMBAC ASSURANCE CORPORATION, ASSURED
GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., FINANCIAL
GUARANTY INSURANCE COMPANY, AND NATIONAL PUBLIC FINANCE
GUARANTEE CORPORATION TO URGENT MOTION FOR ENTRY OF AN ORDER
APPROVING THIRD AMENDED STIPULATION AND CONSENT ORDER
REGARDING THE TOLLING OF STATUTE OF LIMITATIONS (ECF NO. 15633)**

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

Pursuant to the Court’s scheduling order (ECF No. 15654), Ambac Assurance Corporation (“Ambac”), Assured Guaranty Corp., Assured Guaranty Municipal Corp. (together, “Assured”), Financial Guaranty Insurance Company (“FGIC”), and National Public Finance Guarantee Corporation (“National”) (collectively, the “Monolines”) respectfully submit this Limited Objection to the *Urgent Motion for Entry of an Order Approving Third Amended Stipulation and Consent Order Between Title III Debtors (Other Than COFINA) and the Puerto Rico Fiscal Agency and Financial Advisory Authority Acting on Behalf of the Governmental Entities Listed on Exhibit “B” Regarding the Tolling of Statute of Limitations* (ECF No. 15633, “Urgent Motion”).²

1. The Urgent Motion requests the Court’s approval of a “Third Amended Stipulation,” attached as Exhibit A to the Urgent Motion, that would broadly toll the statute of limitations applicable to a host of potential avoidance actions regarding transfers among the Commonwealth, HTA, ERS, PREPA, and more than four dozen other government entities (the “Proposed Tolling Stipulation”).

2. Although the Monolines do not object to extending the statute of limitations for the avoidance actions that are covered by the Proposed Tolling Stipulation, they *do* object to the fact that the Proposed Tolling Stipulation continues to *explicitly carve out* certain avoidance actions that would vindicate HTA’s rights to Excise Taxes wrongfully transferred to the Commonwealth (the “HTA Avoidance Actions”).³ The statutes of limitations for certain HTA Avoidance Actions had been previously extended by another tolling stipulation entered on January 8, 2020 as ECF No. 9722 (the “HTA Tolling Stipulation”). Now, however, as with the Second Amended

² All capitalized terms not defined herein shall have the meanings ascribed to them in the Urgent Motion.

³ For the avoidance of doubt, the limitations period for claims arising under Section 549 of the Bankruptcy Code is “the earlier of . . . (1) two years after the date of the transfer sought to be avoided ; or (2) the time the case is closed.” 11 U.S.C. § 549(d). No tolling is required with respect to any claims under Section 549 with respect to which the limitations period has not yet expired, including any claims under Section 549 that may continue to arise in the future.

Stipulation (ECF No. 13997) (as defined in the Urgent Motion), the new Proposed Tolling Stipulation unfairly singles out and *excludes* the claims that had been previously covered by the HTA Tolling Stipulation.

3. The Court should reject this narrow carve-out that seeks to impair at least some of HTA's claims. The Monolines reiterate and incorporate by reference the reasons already set forth in the Monolines' July 23, 2020 reply brief in support of their request for bridge relief. *See* ECF No. 13814 (the "Monolines' Reply"). As discussed in the Monolines' Reply, it is critical that all HTA Avoidance Actions be preserved, by one means or another, pending a final determination of HTA's property interests in the Excise Taxes—an issue that is currently being litigated and will directly affect the merits of the HTA Avoidance Actions. While the Monolines recognize that the Court previously entered an Order (over similar limited objections by the Monolines) approving the Second Amended Stipulation (ECF No. 13997), the Monolines respectfully re-affirm their positions here in view of the importance and substantive nature of these issues, which continue to be litigated on appeal. Accordingly, the Monolines assert that all HTA Avoidance Actions should have been included, both here and in ECF No. 13997, among the many other claims that are already being preserved by the parties' agreements. The Monolines also believe that, in light of their previous and continuing efforts to preserve the HTA Avoidance Actions, the limitations periods for those actions have been and remain equitably tolled. The Monolines reserve all rights in connection with the HTA Avoidance Actions.

4. The Monolines also note that under the specific terms of the Second Amended Stipulation, the Parties to such Stipulation had the right to extend the tolling period set forth therein "upon thirty (30) days' prior written notice and service of such notice upon the Court and counsel for the Creditors' Committee" (ECF 13997, ¶ 2). The Urgent Motion was submitted to the Court on January 15, 2021.

CONCLUSION

5. For the reasons set forth herein, the Monolines continue to assert that the interests of justice require tolling the limitations period for the HTA Avoidance Actions. The Court should require modification of the Proposed Tolling Stipulation (as well as the Second Amended Stipulation) accordingly.

Dated: January 25, 2021
New York, New York

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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States District Court for the District of Puerto Rico by using the CM/ECF system, which sent notification of such filing to all CM/ECF participants.

New York, New York
January 25, 2021

By: /s/ Howard R. Hawkins, Jr.
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